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E.O. 12958, Sec.3.5NW 21242
By RA/HRM Date 1/23/04DECLASSIFIED
PA/HO Department of State
E.O. 12958, as amended
July 12, 2005DEPARTMENT OF STATE
THE LEGAL ADVISER

July 29, 1970

MEMORANDUM FOR THE SECRETARY

Through: S/S

From: L - John R. Stevenson *JRS*

Subject: Status of the President's Proposal
regarding A New International Regime
for the Seabed --
INFORMATION MEMORANDUM

On May 23, 1970 the President announced that the United States would propose an international agreement under which coastal states would limit their sovereign right over the seabed to the point where the high seas (the United States is also proposing a 12-mile limit on the territorial sea) would reach a depth of 200 meters. The President's proposal further contemplated that coastal states would act as trustees for the international community in an international trusteeship zone comprised of the continental margins beyond a depth of 200 meters off their coasts, determining who shall exploit the seabed's resources and receiving a share of the international royalty payments from the zone in which they act as trustees. Exploration of seabed resources in the area beyond would be authorized by an international authority. The President also announced that the United States would introduce specific proposals at the next meeting of the United Nations Seabed Committee, which meets in Geneva convening on Monday, August 3.

Since the time of the President's announcement, an inter-agency task force, of which I have served as Chairman, has prepared a draft treaty spelling out in detail the President's proposal. This draft treaty has now been cleared by State, Defense, Interior and the other agencies concerned for presentation as a working document for discussion purposes and not necessarily representing the definitive views of the U.S. Government.

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During the course of the preparation of the draft treaty, we conferred with representatives of the oil and hard mineral industries and have incorporated a number of their suggestions in the present version of the treaty and I have also appeared this week before the Interior and Foreign Relations Committees of the Senate and will appear on Friday before the Foreign Affairs and Fisheries Committees of the House. Senator Pell, the Chairman of the Ocean Subcommittee of the Foreign Affairs Committee, and Senator Hollings, Chairman of the Commerce Committee have announced support for the treaty. Senator Jackson and three other members of the Senate Interior Committee wrote you last week indicating their concern regarding presentation of the treaty at this time. However, at the end of my meeting with the Interior Committee on Monday to explain the changes we had made in the treaty in the light of some of the questions they raised together with our intention to present the draft as a working paper for discussion, Senator Metcalf indicated that he regarded my explanation as an appropriate answer to the letter.

Yesterday I talked with Senator Jackson who had been unable to attend the hearing and he asked that I write a letter to him indicating that we were planning to proceed and would keep Senator Metcalf's subcommittee advised.

It is our present plan to submit the draft treaty to the Seabeds Committee in Geneva next Monday and at the same time to make copies available to the press and various capitals in order to achieve the maximum benefit for our overall Law of the Sea effort.

I understand that Secretary Packard discussed with the President and Mr. Kissinger the possibility of a further Presidential announcement at this time with respect to the introduction of the treaty but I do not know whether the White House has taken a final decision on this or not. You will recall that I showed the draft statement to you on Monday and indicated to the White House that the statement was satisfactory to you.

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Attached hereto for your information are (1) May 23, 1970 Statement by the President on U.S. Oceans Policy; (2) a summary prepared by me of the draft treaty; (3) the draft treaty; and (4) a brief statement of the benefits to various states which would result from the treaty.

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Statement of John R. Stevenson, The Legal Adviser,
Department of State, summarizing draft "United
Nations Convention on the International Seabed Area"

On May 23, 1970, President Nixon announced a new oceans policy for the United States and stated that the United States would make specific proposals at the UN Seabeds Committee in August with regard to the proposed regime for the seabeds beyond national jurisdiction which he set forth in broad outline in his announcement. The submission of a draft "United Nations Convention on the International Seabed Area" to the Seabeds Committee as a working paper for discussion within that Committee as well as with other governments and within the United States, implements the President's announcement. The draft Convention and its appendices raise a number of questions with respect to which further detailed study is clearly necessary and do not necessarily represent the definitive views of the United States Government.

The basic structure of the Convention reflects the President's proposals that states should by international agreement renounce their sovereign rights in the seabed under the high seas* beyond a water depth of 200 meters; establish an

* The President also referred to the U.S. proposals to fix the boundary between the territorial sea and the high seas at a maximum of 12 nautical miles with free transit through international straits and carefully defined preferential fishing rights for coastal states on the high seas.

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international regime for the area beyond with certain basic principles and general rules applicable throughout this area; authorize the coastal states as trustees for the international community to carry out the major administrative role in licensing the exploration and exploitation of natural resources from the limit of coastal state national jurisdiction to the edge of the continental margin, and share in the international revenues from the trusteeship area which they administered; and establish international machinery to perform similar functions in the area beyond the continental margin.

Basic Principles

Among the basic principles which would become applicable to the entire International Seabed Area (including the International Trusteeship Area) under the Convention would be the following:

The International Seabed Area would be the common heritage of mankind and no State could exercise sovereignty or sovereign rights over this area or its resources, or, except as provided in the Convention, acquire any right or interest therein.

The International Seabed Area would be open to use by all States without discrimination, except as otherwise provided in the Convention, and would be reserved exclusively for peaceful purposes.

Provision would be made for the collection of revenues from mineral production in the Area to be used for international community purposes including economic advancement of developing countries and to promote the safe, efficient and economic exploitation of the mineral resources of the seabed.

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Exploration and exploitation of the natural resources of the Area must not result in unjustified interference with other activities in the marine environment and all activities in the Area must be conducted with adequate safeguards against pollution and the protection of human life and the marine environment.

A contracting party would be responsible that those authorized by it (as Trustee in the Trusteeship Area) or sponsored by it (in the area beyond) complied with the Convention and for any damage caused by them.

The general rules would be as follows:

Mineral Resources

All exploration and exploitation of the mineral deposits in the Area would be licensed by the appropriate Trustee in the Trusteeship Zone and by the International Seabed Resource Authority in the area beyond subject to general provisions relating to the terms of licenses included as Appendices forming part of the Convention, a number of which allow greater discretion to the Trustee State in the case of the Trusteeship Area. The Contracting Parties would have primary responsibility for inspecting activities licensed or sponsored by them. The International Seabed Resource Authority would also have authority to inspect and determine if a licensed operation violates the treaty. Licenses would be revoked only for cause

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and in accordance with the Convention with expropriation of investments made, or unjustifiable interference with operations conducted, pursuant to a license prohibited.

Living Resources of the Seabed

All contracting parties would have the right to explore and exploit these resources (e.g. king crab) subject to necessary conservation measures and the right of the Trustee in the Trusteeship Area to decide whether and by whom such resources should be exploited.

Protection of the Marine Environment, Life and Property

The International Seabed Resource Authority would be authorized to prescribe rules to protect against pollution of the marine environment and injury to persons and resources resulting from exploration and exploitation and to prevent unjustifiable interference with other activities in the marine environment.

Scientific Research

Each party would agree to encourage and to obviate interference with scientific research and to promote international cooperation in scientific research.

International Trusteeship Area

The provisions of the Treaty relating to the International Trusteeship Area would define the outer limit of the

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area as a line beyond the base of the continental slope where the downward inclination of the seabed reaches a specified gradient, such gradient to be determined by technical experts taking into account, among other factors, ease of determination, the need to avoid dual administration of single resource deposits and the avoidance of including excessively large areas in the Area; would limit the Trustee's rights to those set forth in the Convention; would include among those rights the issuing, suspending and revoking of mineral exploration and exploitation licenses subject to the rules set forth in the Convention and its Appendices, with full discretion to decide whether a license should be issued and to decide to whom a license should be issued; to exercise criminal and civil jurisdiction over its licensees; and to retain a portion (a figure between 33 1/3% and 50% is suggested for consideration) of the fees and payments required under the Convention for activities in the Area; to collect and retain additional license and rental fees to defray its administrative expenses; and to collect other additional payments, retaining the same portion as above of such other additional payments.

International Seabed Resource Authority

The principal organs of the proposed International Seabed Resource Authority would be an Assembly of all Contracting

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Parties; a Council of 24 members, including the six most industrially advanced Contracting States, at least twelve developing countries and at least two landlocked or shelf-locked states; and a Tribunal of from five to nine judges elected by the Council.

The Assembly which would meet at least once every three years, would elect members of the Council, approve budgets proposed by the Council, approve proposals of the Council for changes in allocation of net income within the limits prescribed in an Appendix to the Convention, and make recommendations. The Council, which would make decisions only with the approval of a majority of both the six most advanced industrial members and of the eighteen other members, would appoint the Commissions provided for in the Convention, submit to the Assembly budgets and proposals for changes in the allocation of net income within the limits prescribed in an Appendix, and could issue emergency orders at the request of a Contracting Party to prevent serious harm to the marine environment. The Tribunal would decide all disputes and advise on all questions relating to the interpretation and application of the Convention. It would have compulsory jurisdiction in respect of any complaint brought by a Contracting Party against another Contracting Party for failure to fulfill its obligation under the Convention, or whenever the Operations

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Commission, on its own initiative or at the request of any licensee, considered that a Contracting Party or licensee had failed to fulfill its obligations under the Convention. If the Tribunal found the Contracting Party or licensee in default, such party or licensee must take the measures required to implement the Tribunal's judgment. The Tribunal would have the power to impose fines of not more than \$1,000 for each day of an offense as well as to award damages to the other party concerned. Where the Tribunal determined that a licensee had committed a gross and persistent violation of the provisions of the Convention and within a reasonable time has not brought its operations into compliance, the Council could either revoke the license or request the Trustee Party to do so. Where a Contracting Party failed to perform the obligations incumbent on it under a judgment of the Tribunal, the Council, on application of the other party to the case, could decide upon measures to give effect to the judgment, including, when appropriate, temporary suspension of the rights of the defaulting party under the Convention (the extent of such suspension to be related to the extent and seriousness of the violation). In addition, any Contracting Party, and any person directly affected, could bring before the Tribunal the legality of any measure taken by the Council, or one of its Commissions, on the ground of violation of the Convention, lack of jurisdiction, infringement of important procedural rules, unreasonableness, or misuse of powers and the Tribunal could declare such measure null and void.

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The Convention also provides for the establishment of three Commissions, each of from five to nine members: the Rules and Recommended Practices Commission would consider and recommend to the Council adoption of Annexes as described below. The Operations Commission would issue licenses for mineral exploration and exploitation in the area beyond the International Trusteeship Area and supervise the operations of licensees in cooperation with the Trustee or Sponsoring Party, but not itself engage in exploration or exploitation. The International Seabed Boundary Review Commission would review the delineation of boundaries submitted by the Contracting Parties for approval in accordance with the Convention, negotiate differences among the Parties and if the differences were not resolved initiate appropriate proceedings before the Tribunal, and render advice to Contracting Parties on boundary questions.

The members of the Council could not be employees of the Authority and the members of the Rules and Recommended Practices Commission and the International Seabed Boundary Review Commission would not be full-time employees of the Authority.

The Secretariat of the Authority would consist of a Secretary-General appointed by the Council and a staff appointed by the Secretary-General under the general guidelines established by the Council.

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Any amendment of the Convention or the Appendices would require the approval of the Council and a two-thirds vote of the Assembly and would come into force only when ratified by two thirds of the Contracting Parties, including each of the six most advanced industrial states.

Appendices, which are integral parts of the Convention, are included in the draft Convention by way of example only as they require extensive consideration by technically qualified experts of the questions involved.

The illustrative Appendices included in the draft Treaty relate to a) terms and procedures applying to all licenses in the International Seabed Area; b) terms and procedures applying to licenses in the International Seabed Area beyond the International Trusteeship Area; c) terms and procedures for licenses in the International Trusteeship Area; d) division of revenue; and e) designation of members of the Council representing the six most industrially advanced states.

Appendix A, applicable to the entire International Seabed Area, would provide for: non-exclusive exploration licenses not restricted as to area authorizing geophysical

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and geochemical measurements and bottom sampling;
exclusive exploitation licenses including the right to
undertake deep drilling and expiring at the end of
fifteen years if no commercial production is achieved;
deep drilling for purposes other than exploration or
exploitation of seabed minerals under a permit issued at
no charge by the Authority provided the Authority judges
the proposed drilling does not pose an uncontrollable
hazard to human safety and the environment; certification
by the Trustee or Sponsoring Party of the operator's
technical and financial competence; a minimum and maximum
limit on license fees, the applicable fee to be specified
in an Annex to the Convention with authorization to the
Trustee or Sponsoring Party to impose additional fees
within specified limits to help cover its administrative
costs; the categories of minerals and areas covered by
licenses; relinquishment of part of the licensed area
when production commences; maximum and minimum rental fees
prior to and after attaining commercial production, the
applicable fee to be specified in an Annex to the Convention;
minimum annual work requirements; submission of work
plans and data under exploitation licenses prior to

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commercial production; submission of production plans and reports; unit operations; minimum and maximum payments on production, the applicable amount to be specified in an Annex to the Convention (such payments to be percentages of the gross value at the site of oil and gas or minerals, to be proportional to production, and to be in the nature of payments ordinarily made to governments under similar conditions); the levels of payments on production and work requirements to be graduated to take account of probable risk and cost to the investor, including such factors as water depth, climate, volume of production, vicinity to existing production, or other factors affecting the economic rent that can reasonably be anticipated from mineral production in a given area; and the operator and the Authorizing or Sponsoring Party, as appropriate, to be liable for damage to other users of the environment and to require operators to subscribe to an insurance plan or provide other means of guaranteeing responsibility.

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Appendix B, applicable to the area beyond the International Trusteeship Area, would permit Contracting Parties to obtain exploration and exploitation licenses from the Authority if they designate a specific agency to act as operator on their behalf; and to authorize persons they sponsor to apply for licenses; require the Sponsoring Party to certify as to the technical and financial competence of the operator; would require the Authority to grant licenses on proper application unless another application for the same block has been received at the monthly intervals at which applications are opened; if more than one application has been received, to award the license at competitive bidding among such applicants; to provide for award of a license by competitive bidding in the event of termination, forfeiture, or revocation of an exploitation license, or sale of a block contiguous to a block on which production has begun, or of a block from which hydrocarbons or other fluids are being drained; would authorize transfer of an exploitation license with the approval of the Sponsoring Party and the Authority and the payment of a transfer fee; would provide limits on the duration of exploitation licenses; and would stipulate minimum and maximum work requirements, the applicable amount to be stipulated in an Annex to the Convention.

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Appendix C, applicable solely to the International Trusteeship Area, would reaffirm the Trustee's exclusive right, in its discretion, to approve or disapprove applications for exploration and exploitation licenses; and to use any system for this purpose; to establish the term of the exploitation license and conditions, if any, under which it may be renewed provided that continuance after the first 15 years is contingent upon achieving commercial production; to impose proration; and to set work requirements above the minimums specified in Appendix A.

Appendix D would provide that the net income, after administrative expenses of the Authority, devoted to the economic advancement of developing States Parties to the Convention would be divided among a list of stipulated international and regional development organizations, the list to indicate the percentages assigned to each organization.

Appendix E would stipulate the formula for determining the six most industrially advanced Contracting Parties for purposes of designation to the Council.

Annexes to the Convention would be prepared by the Rules and Recommended Practices Commission, submitted for comments to the Contracting Parties and to the Council for adoption and would come into force unless more than one-third of the Contracting Parties disapproved within three months. In addition

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to fixing the level, basis and accounting procedures for determining international fees and other forms of payment within the ranges specified in Annex A and establishing work requirements for the area beyond the Trusteeship Area within the ranges specified in Appendix B, Annexes could establish criteria for defining technical and financial competence of applicants for licenses; assure that all exploration and exploitation activities and deep drilling were conducted with strict and adequate safeguards for the protection of human life and safety, the marine environment and living marine organisms; prevent or reduce to acceptable limits interference arising from exploration and exploitation activities with other uses and users of the marine environment; assure safe design and construction of fixed exploration and exploitation installations and equipment; and related matters. Any Contracting Party believing that a provision of an Annex could not be reasonably applied to it because of special circumstances might seek a waiver from the Operations Commission.

The Convention ~~would~~ provide for the due integrity of investments in the International Seabed Area made prior to the coming into force of the Convention. Authorizations by a Contracting Party to exploit granted prior to July 1, 1970, would be continued without change after the coming into force of the Convention, with the Contracting Parties being obligated

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to pay the production requirements provided under the Convention, and new activities under such authorizations being subject to the regulatory requirements of the Convention relating to pollution and unjustifiable interference with other uses of the marine environment. With respect to authorizations granted after July 1, 1970, the authorizing Contracting Party would be bound to either issue a new license in its capacity as Trustee or, in the area beyond, to sponsor the licensee's application for a new license from the International Resource Authority. A new license issued by a Trustee would include the same terms and conditions as the previous authorization and the Trustee would be responsible for complying with the increased obligations resulting from the application of the Convention. Moreover, any Contracting Party authorizing activities after July 1, 1970, would be required to compensate the licensee for any investment losses resulting from the application of the Convention.

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